**AMERICAN EXPRESS INTERNATIONAL BANKING CORP.**

**v.**

**UNITED BEARINGS & MACHINERY PTE. LTD.**

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
T KULASEKARAM J
AP RAJAH J
[CIVIL APPEAL NO. 34 OF 1983]
17 MAY 1984

***BANKING:*** *Instruction from client to transfer and credit proceeds of letter of credit to respondent - Subsequent instruction to credit same into own account - Whether there was an assignment - Position of bank with respondent.*

***CONTRACT:*** *Whether there was a promise by bank to respondent - Liability of bank.*

Rol Conveyors Pte. Ltd. (Rol) had entered into a contract with Paddy Marketing Board, Colombo (Board) for the supply of machinery and materials under a World Bank project. Payment to Rol was to be effected under a letter of credit to be issued at the instance of the Board out of funds standing to the credit of the project in New York.

On 29 January 1979 the foreign branch of the People's Bank, Colombo issued in favour of Rol a Letter of Credit (LC) for the sum of US$194,158.95.

The appellant (bank) were the bankers for the respondent who were granted credit lines and overdraft facilities. Rol had also opened an account with the bank. After the issue of the LC the respondent purchased from time to time, machinery and material for Rol's contract with the Board. On 27 April 1979 Rol wrote to the bank with a copy to the respondent that the full proceeds of the LC amounting to US$194,158.95 be transferred and credited to the account of the respondent. The bank neither acknowledged nor replied to any of the letters by Rol or the respondent. On 19 February 1980 the bank received payment, but by then Rol had closed their account with the bank. However, on 20 February 1980 Rol wrote to the bank to remit the said amount in their favour. The bank complied with Rol's instructions and paid the sum of S$416,981.74 into Rol's account in Sumitomo Bank.

At the trial the respondent contended that the letters referred to as AB3, AB6, AB16, AB23 and AB26, constituted a valid legal and/or equitable assignment in their favour for the amounts stated in the above letters. In their defence, the bank simply contended that they were merely collecting bankers of Rol and as such the five letters were merely instructions and that these could be countermanded by Rol as and when they chose to do so. At the time of trial Rol was being wound up. The trial Judge gave judgment for the respondent against the bank in the sum of S$240,390.06 as claimed and ordered that the bank was entitled to be wholly indemnified by Rol.

This is an appeal by the bank.

**Held:**

**[1]** The bank did not promise the respondent to pay them the proceeds or hold it on their behalf or to their use. Therefore the bank is not liable to Rol for money had and received by the bank for or to the use of the respondent.

**[2]** There was no assignment by Rol to the respondent of the rights created by or under the Board's contract of supply in their favour nor were the respondent the payees or endorsees of the Bill.

*[Appeal allowed.]*

*For the appellant - Foo Yew Heng*
*For the respondent - C.H. Smith*

**JUDGMENT**

**AP Rajah J:**

This is an appeal from a judgment of the High Court in favour of the plaintiffs against the first defendants whose claims against the first and second defendants were for (1) a Declaration that five letters written by the second defendants to the first defendants (the Bank) on various dates on and between the 27 April 1979 and 16 January 1980 constituted a valid legal or equitable assignment in favour of the plaintiffs of the sums stated in each of the five letters; (2) a Declaration that the Bank had wrongfully paid to the second defendants the proceeds of a Letter of Credit No. 79/849 dated 29 January 1979 issued by the People's Bank of Colombo, Sri Lanka in favour of the second defendants (the Letter of Credit); (3) the payment by the Bank to the plaintiffs of $240,390.06 being the sum owing by the second defendants to the plaintiffs and which the Bank had, out of the proceeds of the Letter of Credit, wrongfully paid to the second defendants and interest thereon up to payment or judgment.

The aforementioned five letters and two others written by the plaintiffs to the Bank, one dated 3 December 1979 (AB24) and the other 18 January 1980 (AB27), read as follows:

(1) **AB3**

27 April 1979

Dear Sirs,

Re: **Letter of Credit No. 79/849**

We would refer to the above letter of credit No. 79/849 in favour of Rol Conveyors Pte. Ltd. from the Paddy Marketing Board and negotiable through the Bank of America in which a photostat copy is enclosed for your reference.

We intend to ship the goods on the 15 May 1979. Thereafter when the proceeds of the Letters of Credit be credited to our account, we wish to confirm and advise you that the full proceeds of the Letter of Credit amounting to US$194.158.95 (United States Dollars One Hundred Ninety Five Only) be transferred and credited to the account of United Bearings & Machinery Pte. Ltd., account No. 0201-1.

We thank you.

Yours faithfully
ROL Conveyors Pte. Ltd.

(2) **AB6**

4 June 1979

Attn: Mr. Chan, Outward Bills Department

Dear Sirs

Re: **Drawn under People's Bank, Colombo**

Letter of Credit No. 79/489 dated

29 January 1979

In lieu of the discrepancy and the absence of certain documents that called for the above letter of credit, please forward these documents to Bank of America and instruct them to be sent on collection basis.

We understand that the amount will be credited to our account upon payment received from Bank of America. Upon payment received from Bank of America kindly transfer the full proceeds to the account of United Bearings & Machinery Pte. Ltd. account No. 0201-1 as per our letter ref: FAB/TSC/G1426 dated 27 April 1979.

Yours faithfully
ROL Conveyors Pte. Ltd.

(3) **AB16**

11 October 1979

Dear Sirs,

Re: **Letter of Credit No. 79/849**

We would refer to the above letter of credit No 79/849 in favour of Rol Conveyors Pte. Ltd. from the Paddy Marketing Board and negotiable through the Bank of America.

As you are aware the goods have been shipped on the 15 May 1979, thereafter when the proceeds of the said letter of credit be credited to our account amounting to US$194,158.95 (United States Dollars One Hundred Ninety Four Thousand One Hundred Fifty Eight And Cents Ninety Five only), we wish to confirm and advise you that only upon the receipt of the proceeds of this mentioned letter of credit, an amount of S$362,696.43 (Singapore Dollars Three Hundred Sixty Two Thousand Six Hundred Ninety Six And Cents Forty Three Only) be transferred and credited to the account of United Bearings & Machinery Pte. Ltd., Account No 0201-1.

We thank you.

Yours faithfully
ROL Conveyors Pte. Ltd.

(4) **AB23**

30 November 1979

Dear Sirs,

Re: **Letter of Credit No. 79/849**

We would refer to our previous letter dated 11 October 1979 covering the above letter of credit No 79/849 in favour of Rol Conveyors Pte. Ltd. from Paddy Marketing Board and negotiable through the Bank of America.

When the proceeds of the said letter of credit be credited to our account amounting to US$194,158.95 (United States Dollars One Hundred Ninety Four Thousand One Hundred Fifty Eight And Cents Ninety Five Only). We wish to confirm and advise you that upon the receipt of the proceeds of this mentioned letter of credit, an additional amount of S$40,000 (Singapore Dollars Forty Thousand Only) be transferred and credited to the account of United Bearings & Machinery Pte. Ltd., Account No 0201-1.

The amount now stands at S$402,696.43 (Singapore Dollars Four Hundred Two Thousand Six Hundred Ninety Six and Cents Forty Three Only).

We thank you.

Yours faithfully
ROL Conveyors Pte. Ltd.

On the 3 December 1979 (AB24) the plaintiffs wrote to the Bank as follows:

Dear Sirs

American Express Collection OC292/79 for US$194,158.95 Drawn Under the People's Bank, Colombo LC NO. 79/849 DD 29 January 1979

We enclose original letter from Rol Conveyors Pte. Ltd. addressed to you re the above Letter of Credit.

They have now requested you to credit the amount of S$402,696.43 to our account instead of S$362,696.43 as requested in their letter Ref: FAB/TSC/G1511 dated 11 October 1979.

Please arrange to credit our amount accordingly upon receipt of the proceeds of the Letter of Credit and advise.

Yours faithfully
United Bearings & Machinery Pte. Ltd.

(5) **AB26**

16 January 1980

Dear Sirs,

Ref: **Our Bill for US$194,158.95 Drawn on Paddy Marketing Board Colombo Under the Peoples' Bank, Colombo L/C NO. 79/849. Your Ref OC 292/79**

We would refer to the above letter of credit No 79/849 in which Rol Conveyors Pte. Ltd. is the beneficiary.

In view that at present we do not have an account with you, we wish to confirm and advise you that upon the receipt of the proceeds of this mentioned letter of credit, an amount of S$402,696.43 (Singapore Dollars Four Hundred And Two Thousand Six Hundred Ninety Six And Cents Forty Three Only) be transferred and credited to the account of United Bearings & Machinery Pte. Ltd., Account No 0201-1. The balance and after your charges if any be made directly to Rol Conveyors Pte. Ltd., Account No 118003 of the Sumitomo Bank Ltd, Ground Floor, DBS Building, 6 Shenton Way, Singapore 0106.

We thank you.

Yours faithfully
ROL Conveyors Pte. Ltd.

On the 18 January 1980 (AB27), the plaintiffs wrote to the Bank as follows:

Dear Sirs

Re: American Express Collection OC 292/79 For US$194,158.95 Drawn Under the Peoples' Bank Colombo L/C NO. 79/849 DD 29 January 1979

Further to our letter of 3 December, re the above Letter of Credit, we now enclose M/s. Rol's Conveyors Pte. Ltd. letter to you regarding their latest instruction.

Will you be kind enough to act accordingly and advise.

Yours faithfully
United Bearings & Machinery Pte. Ltd.

CC Rol Conveyors Pte. Ltd.

***Facts***

The plaintiffs are a Singapore company and their bankers were the first defendants. They had been banking with them since the 6 August 1973 and had, in the course of their business, been granted credit lines and overdraft facilities. The second defendants were a Singapore trading company who had opened an account with the Bank (on the introduction of a Mr Quek Chin Tiong (Quek), a director of the plaintiff company), on the 13 July 1978.

Some time prior to July 1978 the second defendants had entered into a contract with the Paddy Marketing Board, Colombo, Sri Lanka (the Paddy Marketing Board) for the supply to them of machinery and materials under a World Bank project. Payment to the second defendants was to be effected under a letter of credit to be issued at the instance of the Paddy Marketing Board out of funds standing to the credit of the project in New York.

In the words of Quek, the one and only witness called for the plaintiffs, "the second defendants had no funds to purchase machinery and materials for the Sri Lanka project so we advanced them the funds they needed on occasions and purchased the machinery and materials they required for the Sri Lanka project on condition that the Letter of Credit would be assigned to plaintiff company. Then Ng King Soi (another director of the plaintiff company) and I took Richard Foo (sometime in early July 1978) to the first defendant bank and introduced him to Steven Ong, the first defendant's banking officer. I then told Steven Ong about the arrangement plaintiff company had with the second defendants under which the plaintiff company would finance the purchase of machinery and materials for the second defendants' Sri Lanka project on condition that the Letter of Credit issued in second defendants' favour was assigned to us. I then told Steven Ong that the plaintiff company wanted the first defendant bank to negotiate the L/C on behalf of the second defendants. The L/C is at AB1 and AB2. At the time the plaintiff company had an account with the first defendant bank. The first defendant bank had been our bankers for some years and they had granted us overdraft facilities - can't remember the limit of these facilities. I told Steven Ong that as the plaintiffs were financing the second defendants to purchase machinery and materials when the Letter of Credit was negotiated by the first defendant bank, the proceeds of the L/C should be paid into the plaintiffs' account with the first defendant bank first. Richard Foo consented to this arrangement in front of Steven Ong. Steven Ong then suggested the second defendants should open an account with the first defendant bank. A few days later the second defendants opened an account with the first defendant bank."

On the 29 January 1979 the Foreign Branch of the People's Bank, Colombo, Sri Lanka issued in favour of the second defendants for account of the Paddy Marketing Board an irrevocable and non-transferable Letter of Credit No. 79/849 (the Letter of Credit) valid for negotiations up till the 30 May 1979 under conditions stipulated therein for the sum of US$194.158.95. The Bank of America, Singapore was authorised therein to negotiate the second defendants' drafts.

After the issue of the Letter of Credit the plaintiffs, using their overdraft facilities granted to them by the Bank, purchased from time to time for the second defendants machinery and material for their Paddy Marketing Board's contract. On the 27 April 1979 the second defendants wrote to the Bank as in AB3, carbon copied to the plaintiffs, and on the 30 April 1979 the plaintiffs requested the Bank by letter to confirm AB3, which the Bank did not. The final shipment of machinery and prefabricated parts required for the Sri Lanka project was

effected on or about the 15 May 1979. On the 25 May 1979 the second defendants drew a sight Bill of Exchange (the Bill) payable to the order of the Bank on the Paddy Marketing Board under the Letter of Credit for the sum of US$194,158.95. However on the 4 June (AB6) the second defendants instructed the Bank that, as certain documents called for under the Letter of Credit were not available, they were to forward the documents and the Bill to the Bank of America on a collection basis. Collection instructions to the Bank were given by the second defendants on the 8 June 1979 whereby the Bank were specially instructed to "please send the subject bills to the opening bank for collection. We confirm the proceeds will be credited to our account upon funds received from the opening bank. Upon proceeds credited to our account kindly transfer the amount to United Bearings & Machinery Pte. Ltd. as per out letter reference FAB/TSC/G1426 dated 27 April 1979". The Bank received payment on the Bill from its New York office on the 19 February 1980 but by then the second defendants had closed their account with the Bank sometime before the 16 January 1980.

On the 20 February 1980 the second defendants wrote to the Bank as follows:

> Attn: Mr Wong, Outward Bill Department
>
> Dear Sirs
>
> Ref: Our Bill for US$194,158.95 Drawn on Paddy Marketing Board Colombo Under the Peoples' Bank, Colombo, L/C NO. 79/849. Your Ref OC 292/79
>
> Reference is made to our previous letter dated 16 January 1980 of the above letter of credit No 79/849.
>
> We understand that the remittances are now cleared and in view of certain prevailing matters in which now arise in our company, we are to instruct you to remit the full amount of US$194,158.95 after deducting whatever charges incurred and make the payment in draft in Singapore currency favouring Rol Conveyors Pte. Ltd..
>
> We thank you.

The Bank in compliance with the instructions contained in the above letter of the 20 February 1980 paid the sum of S$416,981.74 on the same day into the second defendants' account in the Sumitomo Bank. During the whole of the period relevant to the Letter of Credit and the Bill, the Bank neither acknowledged not replied to any of the letters written to them either by the second defendants or the plaintiffs.

At the time of the trial the second defendant company was being wound up and although the Official Receiver as Liquidator did not appear in the proceedings, he, however, indicated to the Court that if judgment were to be entered against the second defendants he would accept a proof of debt from the judgment creditor.

The plaintiffs contended at the trial that each of the letters AB3, AB6, AB16, AB23 and AB26 constituted a valid legal and/or equitable assignment in their favour of the amounts stated in the said letters. The Bank's defence was (1) that none of these letters in the circumstances of this case constituted a legal and/or equitable assignment, (2) that there was no privity of contract between the Bank and the plaintiffs, and (3) that the Bank had never at any time agreed or promised to hold the moneys payable under either the Letter of Credit or the Bill for and on behalf of the plaintiffs. Put simply the Bank contended that they were merely the collecting bankers of the second defendants and nothing more, and that as such each of these said five letters were merely instructions given from time to time by their customers the second defendants, to themselves as bankers and that these instructions could be countermanded by the second defendants as and when they chose to do so.

In his Judgment the learned trial Judge refers to the case of *Morrell v. Wootten* 51 ER 753 cited by the Bank's counsel and says:

> There Sir John Romilly M.R. Held that an order given by a man to a banker to pay over a sum to a third person was a mere naked authority to pay which could be revoked. Other cases cited by counsel for the Bank confirmed the aforementioned rule that a mere authority to pay money out of a fund is revocable and gives no right to any third party except where the agent has expressly or impliedly promised the third party to pay him such money or to receive or hold such money on his behalf or for his use, in which case he is personally liable to pay such third party, or to receive or hold such money on his behalf or for his use, as the case may be, event if he has had fresh instructions from his principal not to pay such third party - see **Bowstead on Agency** 14 Edn. Art 124.

As it is common ground that the instructions to the Bank contained in the letter dated 16.1.80 written by the 2nd defendants superseded all previous instructions in regards to the L/Credit No 79/849, I will focus my attention on this letter. Two questions arise in this case: (1) Is the letter dated 16 January 1980 merely a bare authority or does it constitute an equitable and/or legal assignment as claimed by the plaintiffs? and (2) Was notice given to the Bank that the plaintiffs were interested in the money?" (p. 79 of the Record.).

He then goes on to say at p. 82 that

> In our present case the plaintiffs' case was put in two ways. It was presented as a simple case of equitable assignment perfected by notice. It was also presented as a case within section 4(6) of the Civil Law Act (Cap 30 of the 1970 Revised Edition). I have decided for the above reasons that there was a good equitable assignment in plaintiffs' favour perfected by notice. I am also of the view this assignment was also a valid legal assignment.

and gave judgment for the plaintiffs against the Bank in the sum of S$240,390.06 as claimed and with interest thereon at 9% from the 20 February 1980 to date of judgment and ordered that the first defendants were entitled to be wholly indemnified by the second defendants. It should be noted that although the plaintiffs say that by virtue of the letter dated 16 January 1980 (AB26) the amount of S$402,696.43 was absolutely assigned to them by the second defendants the amount claimed by the plaintiffs in their writ against the Bank (First defendants) and the second defendants was for the sum of S$240,390.06. The explanation for this is given by Counsel for the plaintiffs in his final submission when he said:

> that the plaintiffs in this action are not interested in the second defendants. The plaintiffs have received some money from the second defendants and that is why they are claiming only S$240,390.06 from the first defendants.

We agree with the learned trial Judge that the main issue here is whether the letter dated 16 January 1980 (AB26) is merely a bare authority or whether it constitutes an equitable and/or legal assignment as claimed by the plaintiffs. We also agree with him that germane to this issue of liability is the question whether in the instant case the Bank had expressly or impliedly promised the plaintiffs to pay them the proceeds of the Bill or to receive or hold such proceeds on their behalf or to their use. If such had been the promise by the Bank then it would have been liable even after fresh instructions from its customer (the second defendants) not to pay the plaintiffs. Unfortunately, however, the learned trial Judge has made no finding on this vital question. We must now perforce deal with this question.

Relevant to the issue of an express or implied promise on the part of the Bank is the unchallenged evidence on this aspect of the case of the only witness for the Bank, Mr Steven Ong, the Vice-President of the Bank:

The second defendants' account with the first defendant bank was opened on 13 July 1978. I now produce photostat of second defendants' account opening form (admitted and marked Ex D1).

The second defendants' account with my bank was already opened before PW1 brought Richard Foo (a director of the second defendants) to see me in January 1979. Before he brought Richard Foo to see me PW1 (Quek) saw me and asked me to negotiate a L/C on his company's behalf. He explained that the L/C was issued by a party in Sri Lanka and that his company was not the beneficiary of this L/C. He did not show me the L/C. I suggested to PW1 that since his company was not the beneficiary of the L/C we could only handle the transaction if he obtained a fresh L/C issued in his company's favour, alternatively he should request for a transferable L/C and get the L/C endorsed to his company. PW1 told me that both my suggestions were not practical because the buyer in Sri Lanka was a government body. So I told PW1 that on that basis we could not negotiate the L/C on his company's behalf. I then suggested to him that as the second defendants had an account with our bank we could negotiate the L/C through the second defendants' account. Subsequently when PW1 submitted the L/C to my bank we discovered we could not negotiate the L/C on account of the many discrepancies in the L/C. So I suggested that we should send the L/C out on a **collection basis** and that we should merely act as collecting agents for second defendants.

During my discussions with Richard Foo and PW1 there was no mention of an arrangement to assign the L/C to the plaintiffs. I don't remember that I saw the L/C before this discussion with Richard Foo and Quek. We had a general discussion as I was being introduced to Richard Foo on this occasion. I did not give them any advice on this occasion. In subsequent discussions I had with plaintiffs' officers I never agreed to consult the plaintiffs regarding the second defendants' account. As far as I was concerned the accounts of plaintiff company and second defendant company were to be treated separately and I was dealing with only the second defendant company in the L/C transaction wherein the first defendants were acting as collecting agents." (Pages 49-51 of the Record of Appeal).

He goes on to say:

When PW1 introduced Richard Foo to me I knew then that they were doing some business together. I did not know very well the nature of their business. They might have mentioned to me the financing of the purchase of machinery for the Sri Lanka project but I did not apply my mind to their problem because I considered it to be their internal matter.

I treated the second defendants as my separate customer for whom the first defendants were acting as collecting agents. When I received the letter at AB3 I viewed it as a mandate from the second defendants to transfer the proceeds of the L/C to the plaintiffs' account after it was received. I did not view this letter as an assignment. I did not reply in writing to the letter at AB4 but I might have told PW1 orally that the bank would only act on the beneficiaries' instruction and as far as the bank was concerned in respect of the L/C it was dealing only with the second defendant company.

On the evidence of Steven Ong it is clear to us that the Bank told the plaintiffs that they were not willing to be involved in the business affairs of the plaintiffs and the second defendants relating to the Paddy Marketing Board and that they would only act as collecting bankers for the second defendants in respect of the Bill.

In these circumstances we find that the Bank did not expressly or impliedly promise the plaintiffs to pay them the proceeds either under the live Letter of Credit or of the Bill or to receive or hold such proceeds on their behalf or to their use. We therefore find that the Bank are not liable to the second defendants for money had and received by the Bank for or to the use of the plaintiffs.

The further question then to determine in this appeal is whether as between the Bank and the second defendants there was a contract of such a nature whereby the right created by or under such contract could be assigned by the second defendants to the plaintiffs. It is acknowledged that it is the general rule of the common law that a contract between the Bank and the second defendants cannot confer rights or liabilities upon the plaintiffs. But it is possible for this to happen under certain conditions and circumstances.

It seems to us that basic to this further question is the nature of the relationship of the Bank to the second defendants which was one of banker and customer where in the instant case the Bank was acting for the second defendants merely for the purpose of collecting the proceeds payable under the Bill. Under this contract for collection the Bank had a right to payment of bank charges after collection and the second defendants had a right to damages if the Bank through negligence on its part were to fail to collect the moneys payable under the Bill. So far as the proceeds of a bill for collection is concerned it is settled law that a collecting bank must respond to the instructions of its customer as to the ultimate disposal of the proceeds. At the time when each of the said five letters was written the Bank was not indebted to the second defendants to the face value of the Bill or in any other sum so that on the date of each of these five letters the second defendants had no right created by or under the contract for collection which could be assigned to the plaintiffs. Further it should not be forgotten that the Letter of Credit was not transferable and therefore it was not possible for the plaintiffs to acquire any rights under it; nor that at the time when payment on the Bill was effected the Bank was acting as a collecting banker. In this case the debtor, both under the Letter of Credit and the Bill, was the Paddy Marketing Board. The right of the second defendants to obtain payment under the contract of supply could have been assigned by the second defendants to the plaintiffs or yet again the Bill itself could have been made payable to the plaintiffs and not to the Bank who were acting merely as collecting bankers.

In all the circumstances of the present case there was no assignment by the second defendants to the plaintiffs of the rights created by or under the Paddy Marketing Board's contract of supply in their favour nor were the plaintiffs the payees or endorsees of the Bill.

We have already found that no action in contract lies against the Bank for money had and received. In our view all the five letters relied upon, including the letter dated 20 February 1980 (AB28) finally relied upon by the plaintiffs, were merely instructions to the Bank by the second defendants and no more. The appeal is allowed and the plaintiffs' claim dismissed with costs here and below.

Also found at [1984] 2 CLJ 313